

REMARKS

Applicants timely submit this response to the Examiner's Office Action of January 3, 2007. The Office Action has been carefully reviewed and the following remarks are made in response thereto.

1. Status of Application

The present application includes pending claims 54-69.

- Claims 54-56, 58, 59, 61-64 and 67 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-7 of U.S. Patent No. 6,071,526 to Schmidt *et al.*
- Claims 54-69 are rejected under 35 U.S.C. §102(b) as being anticipated by publication WO 97/36570 to Schmidt *et al.*

The following issues are outstanding in the present application:

2. Discussion

I. The Rejection of Claims 54-56, 58, 59, 61-64 and 67 Under The Doctrine Of Obviousness-Type Double Patenting

The Office Action includes a rejection of claims 54-56, 58, 59, 61-64 and 67 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-7 of U.S. Patent No. 6,071,526 ('526 patent) to Schmidt *et al.* Applicants respectfully traverse this rejection.

The Examiner asserts that practicing the claimed method of the '526 patent would inherently practice the claimed method (see Office Action of September 7, 2005 at pages 3 and 4), and that "the newly added claims are simply a consolidation of the canceled claims" (see Office Action of January 3, 2007 at page 2). These assertions are incorrect. As previously explained in Applicants' May 18, 2005 (and January 20, 2005) Response, the '526 patent does not disclose, teach or suggest the stabilization, increase, or restoration of collagen (see May 18, 2005 Response at page 6).

Moreover, claim 54 recites the step of "identifying a subject suffering from a collagen deficient condition." Nowhere does the '526 patent mention identifying a patient having a collagen deficient condition. The examiner has not asserted that the '526 discloses or teaches this limitation, or

pointed out where such disclosure may be found in the '526 patent. Accordingly, Applicants respectfully traverse this rejection and request that it be withdrawn.

II. The Rejection of Claims 54-69 Under 35 U.S.C. §102(b)

The examiner rejected claims 54-69 under 35 U.S.C. §102(b) as being anticipated by publication WO 97/36570 to Schmidt *et al* ('570 publication). Applicants respectfully traverse this rejection.

U.S. Patent No. 6,071,526 ('526 patent) to Schmidt *et al.* is a divisional of U.S. Patent No. 5,945,109 ('109 patent) to Schmidt *et al.*, which claims priority to German Patent Application No. DE 196 12 748 ('748 German Application). The '570 publication is a German language publication (except for an English abstract) that claims priority, and has a disclosure similar to the '748 German Application. As previously explained in Applicants' May 18, 2005 (and January 20, 2005) Response, the '526 and '109 patents correspond to the '570 publication. (see May 18, 2005 Response at page 6).

As explained previously with respect to the '526 patent, above, the examiner has failed to assert that the '570 publication discloses or teaches the limitation of claim 54 directed to "identifying a subject suffering from a collagen deficient condition." Further, the examiner has not pointed out where in the German language publication this disclosure may be found, as is required. Accordingly, Applicants respectfully traverse this rejection and submit that claim 54 and its corresponding dependent claims are neither anticipated nor obvious in view of the cited reference, and the claim is therefore allowable.

3. Conclusion.

Applicants believe that this application is now in condition for allowance. Reconsideration and withdrawal of the outstanding rejections and early notice of allowance to that effect is respectfully requested. Should the Examiner have any questions, comments or suggestions in furtherance on the prosecution of this application, he is invited to contact the applicants' representative by telephone at the number indicated below. If there are any other fees due in connection with the filing of this response, please charge the fees as follows:

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Director is hereby authorized by this paper to charge any additional fees during the entire pendency of this application, including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 13-3250, reference No. 38891.00000. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F. R. § 1.136(a)(3).

Respectfully submitted,

MILBANK, TWEED, HADLEY & McCLOY LLP

Date: June 4, 2007

By: Allison Fulton
Allison Fulton
Registration No. 57,106

Customer No. 38647
MILBANK, TWEED, HADLEY & McCLOY LLP
1850 K Street, N.W., Suite 1100
Washington, DC 20006
Tel. No. (202) 835-7500
Fax No. (202) 835-7586